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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/252,574	02/18/1999	JAY S. WALKER	17200-060	4666

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EXAMINER	
ROSEN, NICHOLAS D	

ART UNIT	PAPER NUMBER
3625	

DATE MAILED: 10/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/252,574	WALKER ET AL.	
	Examiner	Art Unit	
	Nicholas D. Rosen	3625	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *31 July 2006*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *2-16 and 29-43* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *2-16 and 29-43* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *24 May 1999* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claims 2-16 and 29-43 have been examined.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 2-8, 11, and 13-16

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hensley ("I'll Take Juarez") in view of Abel et al. (U.S. Patent 5,289,371), the anonymous article, "Electrical," and official notice. Hensley discloses an allocation method in a buyer-driven system in which conditional purchase offers can be received and considered by or on behalf of a plurality of sellers, the conditional purchase offers including a buyer-

specified price for a good or service (first page, fourteenth text paragraph et subseq.). Hensley does not expressly disclose identifying one of at least two sellers as a priority seller, but by beginning with a particular seller, while knowing that there was another shop down the street (second page, fourth, fifth, and ninth paragraphs), Hensley implicitly identified that seller as a priority seller. Hensley discloses providing the priority seller with a first look opportunity to satisfy a conditional purchase offer (first page). Hensley does not disclose identifying one of at least two sellers as a priority seller based on a priority metric, but it is well known to identify a seller as a priority seller based on a priority metric, as taught by "Electrical" (paragraph beginning "In spite of these changes," where a store being closest, and being most likely to have what the consumer wants are examples of priority metrics, as is having the best price, although that may arguably be inapplicable to a buyer-driven system).

Hensley does not expressly disclose determining which of at least two sellers can satisfy a conditional purchase offer before identifying one as a priority seller, but does disclose determining that one seller could satisfy a conditional purchase offer (by seeing the desired product in his shop, first page). Abel teaches sending floral orders to a plurality of florists, not druggists or auto mechanics, but persons or firms whose participation in the flower business has given evidence of their ability to satisfy an order to deliver flowers (column 11, lines 16-41). Hence, it would have been obvious to one of ordinary skill in the art of commerce at the time of applicant's invention to determine which of at least two sellers could satisfy a conditional purchase offer before identifying one as a priority seller, for the obvious advantage of saving time, effort, and the

disclosure of information which one might wish to keep confidential by making offers to persons or firms unable to satisfy the offers.

Hensley does not disclose that conditional purchase offers include a payment identifier specifying a financial account identifier to be used to pay for the good or service upon acceptance of a conditional purchase offer by a seller, but official notice is taken that it is well known to specify financial account identifiers (see Table 3 in Abel, for example). Hence, it would have been obvious to one of ordinary skill in the art of commerce at the time of applicant's invention to have conditional purchase offers include payment identifiers specifying financial accounts, for the obvious advantage of providing evidence of a buyer's ability and willingness to pay, as well as for enabling actual payment upon the acceptance of a conditional purchase offer.

Hensley does not disclose that providing the priority seller with a first look opportunity to satisfy a conditional purchase offer is done after receiving the buyer-specified price, payment identifier, and authorization, but Abel teaches that payments are made immediately through subscriber's credit card accounts, implying that payment identifiers (e.g., credit card numbers) and authorizations have been received (column 13, line 55, through column 14, line 10). Hence, it would have been obvious to one of ordinary skill in the art of commerce at the time of applicant's invention to provide the priority seller with a first look opportunity to satisfy a conditional purchase offer after receiving the buyer-specified price, payment identifier, and authorization, for the obvious advantage of payments through credit card or other accounts to be lawfully carried out.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hensley, Abel, "Electrical," and official notice as applied to claim 5 above. Hensley does not expressly disclose that he provided another of at least two sellers with a second look opportunity to satisfy the conditional purchase offer, but does state that it would have been possible to do so, and that this was widely known (second page, paragraphs, four, five, and nine). Hence, it would have been obvious to one of ordinary skill in the art of commerce at the time of applicant's invention to provide another of the at least two sellers with a second look opportunity to satisfy the conditional purchase offer, for the obvious advantage of giving the buyer another chance to obtain something that the priority seller was unable or unwilling to sell at a price acceptable to the buyer.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hensley, Abel, "Electrical," and official notice as applied to claim 5 above, and further in view of Donner et al. (European Patent Application 0 512 702 A2). Hensley does not expressly disclose binding the buyer to the conditional purchase offer, but Donner et al. disclose this (page 3, lines 2-8). (See also page 6, lines 3-18, for more on conditional purchase offers in Donner et al.) Hence, it would have been obvious to one of ordinary skill in the art of commerce at the time of applicant's invention to bind the buyer to the conditional purchase offer, for the obvious advantage of assuring the seller that responding to the conditional purchase offer would be worth his time and trouble.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hensley, Abel, "Electrical," and official notice as applied to claim 5 above. Hensley discloses notifying the buyer that the conditional purchase offer will not be satisfied (by a head

shake, first page; admittedly the notification was withdrawn, but the buyer was nonetheless notified).

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hensley, and Abel, "Electrical," and official notice as applied to claim 5 above, and further in view of Donner et al. Hensley does not disclose that one of the at least two sellers is an agency-based seller, but Donner et al. teach that sellers can be agency-based sellers (page 3, lines 2-8). Hence, it would have been obvious to one of ordinary skill in the art of commerce at the time of applicant's invention to have a seller be an agency-based seller, for the obvious advantage of enabling business to be conducted without the need to contact the seller.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hensley, Abel, "Electrical," and official notice as applied to claim 5 above. Hensley discloses that the seller was a broadcast-based seller (pages 1 and 2).

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hensley, Abel, "Electrical," and official notice as applied to claim 5 above, and further in view of Donner et al. Hensley does not expressly disclose that the conditional purchase offer is a binding conditional purchase offer, but Donner et al. teach this (page 3, lines 2-8). (See also page 6, lines 3-18, for more on conditional purchase offers in Donner et al.) Hence, it would have been obvious to one of ordinary skill in the art of commerce at the time of applicant's invention to make the conditional purchase offer a binding conditional purchase offer, for the obvious advantage of assuring the seller that responding to the conditional purchase offer would be worth his time and trouble.

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hensley, Abel, "Electrical," and official notice as applied to claim 5 above. Hensley does not disclose assigning a random number to each of the at least two sellers, and using the random number to identify the priority seller. However, official notice is taken that it is well known to assign random numbers to decide who shall have priority. (The Selective Service system used until 1973 is one example. Drawing straws, rolling dice, cutting cards, etc., to decide who shall enjoy some privilege or perform some task are other examples.) Hence, it would have been obvious to one of ordinary skill in the art of commerce at the time of applicant's invention to assign and use random numbers to identify the priority seller, for the obvious advantages of assuring potential sellers that they would have an equal chance at getting business, and to assure potential buyers that they would have equal chances of being assigned any potential seller as a priority seller, rather than, for example, being steered to a high-priced seller in collaboration with the operator of the system.

Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hensley, Abel, "Electrical," and official notice as applied to claim 5 above, and further in view of Donner et al. Hensley does not expressly determining a buyer preference metric for each of the at least two sellers, and using the buyer preference metric to identify at least one of the at least two sellers as the priority seller, but Donner et al. teach doing so (page 9, line16, through page 10, line 41). Hence, it would have been obvious to one of ordinary skill in the art of commerce at the time of applicant's invention to determine and

use a buyer preference metric, for the obvious advantage of steering the buyer to a seller who best matches the buyer's wants.

Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hensley, Abel, "Electrical," and official notice as applied to claim 5 above. Hensley discloses providing an advantage to the one of at least two sellers identified as the priority seller, namely that the priority seller had the opportunity to make a profit on the sale of a pair of sandals to the buyer, an opportunity which other sellers did not have.

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hensley, Abel, "Electrical," and official notice as applied to claim 5 above. Hensley does not disclose determining whether more than one seller price will satisfy the conditional purchase offer, and selecting the highest seller price. However, official notice is taken that it is well known for sellers to prefer to sell higher-priced goods and services if possible, and to steer potential buyers toward higher-priced goods, which are typically shown first. Hence, it would have been obvious to one of ordinary skill in the art of commerce at the time of applicant's invention to determine whether more than one seller price would satisfy a conditional purchase offer, and to select the highest seller price, for the obvious advantages of enjoying the greater profits typically resulting from the sale of higher-priced goods and services, and leaving the lower-priced goods and services available for sale to customers only willing or able to pay a lower price.

Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hensley, Abel, "Electrical," and official notice as applied to claim 5 above. Hensley discloses that he started off to determine whether there were other sellers that could satisfy the

conditional purchase offer, and to perform a low price search of the other sellers, before this was rendered unnecessary by the priority seller's decision to satisfy the conditional purchase offer.

Claim 9

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hensley in view of Abel et al. (5,289,371) and official notice. Hensley discloses an allocation method in a buyer-driven system in which conditional purchase offers can be received by or on behalf of a plurality of sellers, the conditional purchase offers including a buyer-specified price for a good or service (page 1, fourteenth text paragraph et subseq.). Hensley does not expressly disclose identifying one of at least two sellers as a priority seller, but by beginning with a particular seller, while knowing that there was another shop down the street (second page, ninth paragraph), Hensley implicitly identified that seller as a priority seller. Hensley discloses providing the priority seller with a first look opportunity to satisfy a conditional purchase offer (first page). Hensley does not disclose that identifying one of at least two sellers as a priority seller includes: determining a number of first look opportunities due to the at least two sellers based on an adjusted market share, determining a number of first look opportunities given to the at least two sellers, and identifying one of the at least two sellers with the largest deficiency between percentage of first look opportunities given and opportunities due as the priority seller. However, Abel teaches identifying one of at least two sellers as a priority seller based on a priority metric by determining a number of opportunities due to at least two sellers (the number of opportunities due being implicitly derived from the

percentage of opportunities due), determining a number of opportunities given to the at least two sellers, and identifying one of the at least two sellers with the largest deficiency between opportunities given and opportunities due as the priority seller (column 11, lines 16-41). Hence, it would have been obvious to one of ordinary skill in the art of commerce at the time of applicant's invention to identify a priority seller on the basis of opportunities given and opportunities due as claimed, for the obvious advantage of assuring that first look opportunities are allocated in a fair and objective manner.

Hensley does not disclose that conditional purchase offers include a payment identifier specifying a financial account identifier to be used to pay for the good or service upon acceptance of a conditional purchase offer by a seller, but official notice is taken that it is well known to specify financial account identifiers (see Table 3 in Abel, for example). Hence, it would have been obvious to one of ordinary skill in the art of commerce at the time of applicant's invention to have conditional purchase offers include payment identifiers specifying financial accounts, for the obvious advantage of providing evidence of a buyer's ability and willingness to pay, as well as for enabling actual payment upon the acceptance of a conditional purchase offer.

Hensley does not disclose that providing the priority seller with a first look opportunity to satisfy a conditional purchase offer is done after receiving the buyer-specified price, payment identifier, and authorization, but Abel teaches that payments are made immediately through subscriber's credit card accounts, implying that payment identifiers (e.g., credit card numbers) and authorizations have been received (column

13, line 55, through column 14, line 10). Hence, it would have been obvious to one of ordinary skill in the art of commerce at the time of applicant's invention to provide the priority seller with a first look opportunity to satisfy a conditional purchase offer after receiving the buyer-specified price, payment identifier, and authorization, for the obvious advantage of payments through credit card or other accounts to be lawfully carried out.

Claim 10

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hensley in view of Abel et al. (5,289,371) and official notice. Hensley discloses an allocation method in a buyer-driven system in which conditional purchase offers can be received by or on behalf of a plurality of sellers, the conditional purchase offers including a buyer-specified price for a good or service (page 1, fourteenth text paragraph et subseq.). Hensley does not expressly disclose identifying one of at least two sellers as a priority seller, but by beginning with a particular seller, while knowing that there was another shop down the street (second page, ninth paragraph), Hensley implicitly identified that seller as a priority seller. Hensley discloses providing the priority seller with a first look opportunity to satisfy a conditional purchase offer (first page). Hensley does not disclose that identifying one of at least two sellers as a priority seller includes: determining a percentage of first look opportunities due to the at least two sellers based on an adjusted market share, determining a percentage of first look opportunities given to the at least two sellers, and identifying one of the at least two sellers with the largest deficiency between percentage of first look opportunities given and opportunities due as the priority seller. However, Abel teaches identifying one of at least two sellers as a

priority seller based on a priority metric on just these grounds (column 11, lines 16-41). Hence, it would have been obvious to one of ordinary skill in the art of commerce at the time of applicant's invention to identify a priority seller on the basis of market share as claimed, for the obvious advantage of assuring that first look opportunities are allocated in a fair and objective manner.

Hensley does not disclose that conditional purchase offers include a payment identifier specifying a financial account identifier to be used to pay for the good or service upon acceptance of a conditional purchase offer by a seller, but official notice is taken that it is well known to specify financial account identifiers (see Table 3 in Abel, for example). Hence, it would have been obvious to one of ordinary skill in the art of commerce at the time of applicant's invention to have conditional purchase offers include payment identifiers specifying financial accounts, for the obvious advantage of providing evidence of a buyer's ability and willingness to pay, as well as for enabling actual payment upon the acceptance of a conditional purchase offer.

Hensley does not disclose that providing the priority seller with a first look opportunity to satisfy a conditional purchase offer is done after receiving the buyer-specified price, payment identifier, and authorization, but Abel teaches that payments are made immediately through subscriber's credit card accounts, implying that payment identifiers (e.g., credit card numbers) and authorizations have been received (column 13, line 55, through column 14, line 10). Hence, it would have been obvious to one of ordinary skill in the art of commerce at the time of applicant's invention to provide the priority seller with a first look opportunity to satisfy a conditional purchase offer after

receiving the buyer-specified price, payment identifier, and authorization, for the obvious advantage of payments through credit card or other accounts to be lawfully carried out.

Claim 12

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hensley in view of Abel et al. (5,289,371), the anonymous article, "Electrical," and official notice. Hensley discloses an allocation method in a buyer-driven system, in which conditional purchase offers can be received or considered by or on behalf of a plurality of sellers, the conditional purchase offer including a buyer-specified price for a good or service (page 1, fourteenth text paragraph et subseq.), the method comprising identifying one of at least two sellers as a priority seller; and providing the priority seller with a first look opportunity to satisfy a conditional purchase offer (page 1). Hensley does not disclose determining a market share for each of the at least two sellers, but Abel teaches doing so, and also teaches identifying one of the sellers that could satisfy a purchase offer as the priority seller based on that seller having the largest market share (column 11, lines 16-41, especially lines 38-40). It may also be noted that potential customers sometimes choose to take their business first to the most prominent firm, or firm with the largest market share, typically on the presumption that its products must be good to have won the largest market share, "Nothing succeeds like success." Hence, it would have been obvious to one of ordinary skill in the art of commerce at the time of applicant's invention to identify one of the sellers having the largest market share that could also satisfy the conditional purchase offer as the priority seller, for the obvious advantages of dealing with a seller likely to provide quality goods or services at affordable prices, and

saving time by giving the first look opportunity to the firm most likely to have the appropriate product or service in its inventory or equivalent.

Hensley does not disclose identifying one of at least two sellers as a priority seller based on a priority metric, but it is well known to identify a seller as a priority seller based on a priority metric, as taught by "Electrical" (paragraph beginning "In spite of these changes," where a store being closest, and being most likely to have what the consumer wants are examples of priority metrics, as is having the best price, although that may arguably be inapplicable to a buyer-driven system).

Hensley does not disclose that conditional purchase offers include a payment identifier specifying a financial account identifier to be used to pay for the good or service upon acceptance of a conditional purchase offer by a seller, but official notice is taken that it is well known to specify financial account identifiers (see Table 3 in Abel, for example). Hence, it would have been obvious to one of ordinary skill in the art of commerce at the time of applicant's invention to have conditional purchase offers include payment identifiers specifying financial accounts, for the obvious advantage of providing evidence of a buyer's ability and willingness to pay, as well as for enabling actual payment upon the acceptance of a conditional purchase offer.

Hensley does not disclose that providing the priority seller with a first look opportunity to satisfy a conditional purchase offer is done after receiving the buyer-specified price, payment identifier, and authorization, but Abel teaches that payments are made immediately through subscriber's credit card accounts, implying that payment identifiers (e.g., credit card numbers) and authorizations have been received (column

13, line 55, through column 14, line 10). Hence, it would have been obvious to one of ordinary skill in the art of commerce at the time of applicant's invention to provide the priority seller with a first look opportunity to satisfy a conditional purchase offer after receiving the buyer-specified price, payment identifier, and authorization, for the obvious advantage of payments through credit card or other accounts to be lawfully carried out.

Claims 29-43

Claim 32 is parallel to claim 5, and dependent claims 29, 30, 31, 33, 34, 35, 38, 40, 41, 42, and 43 are parallel to claims 2, 3, 4, 6, 7, 8, 11, 13, 14, 15, and 16, respectively, and are therefore rejected on the same grounds.

Claim 36 is parallel to claim 9, and therefore rejected on the same grounds.

Claim 37 is parallel to claim 10, and therefore rejected on the same grounds.

Claim 39 is parallel to claim 12, and therefore rejected on the same grounds.

Response to Arguments

Applicants' arguments filed July 31, 2006 have been fully considered but they are not persuasive. Applicants argue that Hensley does not teach a conditional purchase offer including (1) a buyer-specified price for a good or service, to which Examiner replies that Hensley teaches this (the buyer-specified price being $12.50 for a pair of sandals). Applicants argue that Hensley does not teach (2) a payment identifier specifying a financial account to be used to pay for said good or service upon acceptance of a conditional purchase offer by a seller, and (3) authorization to charge said payment identifier for said good or service upon acceptance of the offer, which is

true, but Examiner responds that providing such payment identifiers and authorizations (e.g., in paying by credit card) is well known, and taught by other art. In particular, Applicants argue that Hensley's statement that "during the course of the next 15 to 25 minutes, the price changed constantly" is contradicts Examiner's view that Hensley discloses a conditional purchase offer including a buyer-specified price for a good or service; Examiner replies that this describes a time before Hensley made his conditional purchase offer including a buyer-specified price for a good or service.

Applicants further argue that neither Hensley nor Abel teaches identifying a priority seller based on a priority metric, to which Examiner makes two points in reply: First, "priority metric" is very broadly defined, and could include a wide variety of factors, including random numbers or a buyer preference (the instant specification, page 7, lines 15-17, and page 19, lines 10-18). Thus, whatever motivated Hensley to first try one shop rather than another can be called a priority metric. Secondly, if that is not sufficient, the Abel patent and the article, "Electrical," teach specific priority metrics, as do other prior art articles made of record with this action. Applicants argue that a user's decision about where to shop, as taught in "Electrical," definitely does meet the broad definition of "priority metric" given in the specification. Parenthetically, which seller offers the best price would not necessarily be irrelevant in a buyer-driven system, since the buyer could well prefer to give priority to a seller likely to accept the buyer's conditional purchase offer, rather than a seller who would almost certainly decline it.

Finally, Applicants state that they traverse the instances of Official Notice in the Office Action. Examiner reminds Applicants that the instances of Official Notice were

traversed previously, in response to which prior art references were made of record in the Office Action mailed January 30, 2006 (pages 2 and 3).

The Manual of Patent Examination Procedure (2144.03 (C)) states, in regard to traversal of Official Notice:

> C. If Applicant Challenges a Factual Assertion as Not Properly Officially Noticed or not Properly Based Upon Common Knowledge, the Examiner Must Support the Finding with Adequate Evidence.
>
> To adequately traverse such a finding, an applicant must specifically point out the supposed errors in the examiner's action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art. See 37 CFR 1.111(b). See also Chevenard, 139 F.2d at 713, 60 USPQ at 241 ("[I]n the absence of any demand by appellant for the examiner to produce authority for his statement, we will not consider this contention."). A general allegation that the claims define a patentable invention without reference to the examiner's assertion of official notice would be inadequate.

It may well be disputed whether Applicants' general assertion of lack of obviousness qualifies as an adequate traversal, but prior art references having been made of record, as noted, the point is now believed to be moot.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nicholas D. Rosen whose telephone number is 571-272-6762. The examiner can normally be reached on 8:30 AM - 5:00 PM, M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey A. Smith can be reached on 571-272-6763. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Non-official/draft communications can be faxed to the examiner at 571-273-6762.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Nicholas D. Rosen

NICHOLAS D. ROSEN
PRIMARY EXAMINER

October 2, 2006